

FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

FIRST GENERAL COUNSEL'S REPORT

AUDIT REFERRAL: 12-11
DATE REFERRED: November 27, 2012
LAST RESPONSE RECEIVED: January 15, 2013
DATE ACTIVATED: January 16, 2013

ELECTION CYCLE: 2008
EARLIEST SOL: August 16, 2013¹
LATEST SOL: November 15, 2013

SOURCE: Internally Generated

RESPONDENTS: Democratic Executive Committee of Florida and
Judy Mount in her official capacity as treasurer²

RELEVANT STATUTES: 2 U.S.C. § 434(b)
2 U.S.C. § 441a(a)
2 U.S.C. § 441a(d)
2 U.S.C. § 441a(f)

INTERNAL REPORTS CHECKED: Audit Documents
Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Audit Division ("Audit") referred this matter to the Office of the General Counsel ("OGC") following an audit of the activity of the Democratic Executive Committee of Florida and Judy Mount in her official capacity as treasurer (the "Committee") covering the period from January 1, 2007, through December 31, 2008. See 2 U.S.C. § 438(h). The Final Audit Report ("FAR"), approved by the Commission on September 17, 2012, contained three referable findings: that the Committee (1) exceeded its coordinated party expenditure limitation by

¹ The statute of limitations had already expired on \$2,341.49 in activity before this matter was referred to the Office of the General Counsel.

² On February 11, 2013, the Democratic Executive Committee of Florida filed an amended Statement of Organization naming Judy Mount as its new treasurer in place of Alma Gonzalez. Statement of Organization (Feb. 11, 2013).

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1 \$22,400; (2) failed to itemize coordinated party expenditures of \$194,957; and (3) failed to
2 properly disclose disbursements totaling \$9,554,713. Pursuant to a single event threshold, Audit
3 also has referred an additional issue that was not included in the FAR: that the Committee
4 appears to have accepted an excessive contribution of \$10,000. On the basis of the FAR and
5 Audit's Referral, we recommend that the Commission open a Matter Under Review, find reason
6 to believe that the Committee violated 2 U.S.C. §§ 434(b), 441a(a) and 441a(f), and enter into
7 pre-probable cause conciliation.

8 **II. FACTUAL AND LEGAL ANALYSIS**

9 **A. Background**

10 The Committee is a state party committee that registered with the Commission on
11 April 19, 1972. Pursuant to 2 U.S.C. § 438(b), the Commission authorized an audit of the
12 Committee's activity during the period from January 1, 2007, through December 31, 2008.
13 Audit issued an Interim Audit Report ("IAR") on July 22, 2011, and a Draft Final Audit Report
14 ("DFAR") on March 13, 2012 to the Committee. The Committee responded to the IAR and
15 DFAR by amending certain disclosure reports and submitting formal responses. See IAR Resp.
16 (Sept. 23, 2011); DFAR Resp. (Mar. 28, 2012). It did not request an Audit Hearing. The
17 Commission approved the Proposed Final Audit Report on September 17, 2012; Audit referred
18 this matter to OGC on November 27, 2012; and OGC notified the Committee of the Referral on
19 December 3, 2012. See Agency Procedure for Notice to Respondents in Non-Complaint
20 Generated Matters, 74 Fed. Reg. 38,617 (Aug. 4, 2009).

21 **B. Excessive Coordinated Party Expenditures**

22 Annette Taddeo was a candidate for the U.S. House of Representatives from Florida
23 during the 2008 election cycle. The Committee aired two advertisements on behalf of Taddeo

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1 that constitute coordinated party expenditures: one discussing her position on health care, the
2 other discussing her opponent's voting record. AR 12-11 at 4-5 (Democratic Executive
3 Committee of Florida). The Committee paid \$82,400 to run the two ads which included
4 disclaimers stating: "Paid for by the Florida Democratic Party and Taddeo for Congress,
5 Approved by Annette Taddeo." *Id.*

6 In addition to any contribution from a committee to a candidate permissible under
7 11 C.F.R. § 110.2, the Federal Election Campaign Act of 1971, as amended, (the "Act") provides
8 that a state committee of a political party may make coordinated party expenditures in
9 connection with the general election campaign of candidates for federal office in that state and
10 affiliated with that party. 2 U.S.C. § 441a(d); 11 C.F.R. § 109.32(b), (d). The amounts of such
11 coordinated party expenditures are limited by 2 U.S.C. § 441a(d)(3). Any coordinated party
12 expenditure exceeding this limitation constitutes an in-kind contribution, *see* 11 C.F.R.
13 § 100.52(d)(1), and is therefore subject to the contribution limitations of 2 U.S.C. § 441a(a).

14 The national and state committees of a political party may assign their respective
15 authority to make coordinated party expenditures to another political party committee. 11 C.F.R.
16 § 109.33(a). "Such an assignment must be made *in writing*, must state the amount of the
17 authority assigned, and must be received by the assignee committee *before* any coordinated party
18 expenditure is made pursuant to the agreement."³ *Id.* (emphasis added). A political party
19 committee must retain any such written assignment for at least three years. 11 C.F.R.
20 § 109.33(c).

21 For the 2008 election cycle, the coordinated expenditure limit for a congressional
22 candidate running in Florida was \$42,100. Price Index Increases for Expenditure Limitations, 73

³ In past cases, the Commission has rejected assignments of spending authority after the fact. *See* Final Audit Report, MUR 5274 (Missouri Democratic State Committee); Final Audit Report, MUR 5246 (California Republican State Committee).

1 Fed. Reg. 8,696 (Feb. 14, 2008). The Committee's records reflect that it was also authorized by
2 the Democratic Congressional Campaign Committee ("DCCC") to spend an additional \$17,900
3 in connection with the Taddeo election. AR 12-11 at 5. Thus, the Committee was authorized to
4 make \$60,000 in total coordinated party expenditures on behalf of Taddeo.

5 The Committee stated its belief that, in addition to the \$17,900 that the DCCC assigned,
6 it was also authorized to spend an additional \$22,400. *Id.* at 5. The Committee reasons that the
7 DCCC had reported spending only \$1,754 on behalf of Taddeo and the DCCC stated that it
8 would not have withheld any requested transfer of authority. *Id.* Neither the Committee nor the
9 DCCC, however, have any written records evidencing the transfer of additional expenditure
10 authority beyond \$17,900. *Id.* at 6. Thus, based on the records produced during the audit, the
11 Committee's coordinated party expenditure limit in connection with the Taddeo election totaled
12 \$60,000 (\$42,100 + \$17,900). *Id.* And on this basis, the Commission approved a finding that
13 the Committee exceeded its coordinated party expenditure limit by \$22,400 (\$82,400 - \$60,000).
14 *Id.* at 6-7.

15 In response to the Referral, the Committee acknowledges that it cannot locate any records
16 evidencing the asserted additional expenditure authority from the DCCC. Resp. at 1 (Jan. 15,
17 2013). The Committee notes, however, that the DCCC did not intend to use its additional
18 authority and that the combined coordinated expenditure limit of \$84,200 was not exceeded on
19 behalf of Taddeo. *Id.* Thus, the Committee argues that "no unfair advantage had been conferred
20 upon [the Committee] or the Taddeo campaign," and the violation amounts to "a paperwork error
21 only." *Id.* at 2.

22 Commission regulations are unmistakably plain. Regardless of whether the DCCC
23 intended to assign its additional expenditure authority to the Committee, the assignment must

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1 have been made in *writing* and made before any expenditure can be made pursuant to the
2 assignment. Because there was no such written authorization, as set forth in the Referral, the
3 Committee exceeded its coordinated party expenditure limit by \$22,400. We therefore
4 recommend that the Commission find reason to believe that the Committee violated 2 U.S.C.
5 § 441a(a) by making an excessive contribution of \$22,400.⁴

6 **C. Failure to Itemize Coordinated Party Expenditures**

7 The Audit Division identified 62 coordinated party expenditures that were not itemized as
8 such on Schedule F. AR 12-11 at 7-8. These expenditures, totaling \$194,957, were made on
9 behalf of six congressional candidates and include payments for staff salaries, direct mail, cell
10 phones, and media advertisements. *Id.* During the audit, the Committee filed amended reports
11 "substantially disclos[ing]" the expenditures in question on Schedule F. *Id.* at 7. The FAR thus
12 concludes that "DECF has corrected the public record with respect to these transactions." *Id.*
13 Although the Committee corrected its disclosure reports, its original reports did not fully disclose
14 these transactions. Accordingly, the Commission approved a finding that the Committee did not
15 itemize coordinated party expenditures of \$194,957 on Schedule F. *Id.* at 8.

16 In response to the Referral, the Committee acknowledges that the expenses were not
17 disclosed on Schedule F but notes that they were disclosed on Schedule B. Resp. at 2. The
18 Committee further notes that it promptly amended its reports in response to the IAR. *Id.*

19 Any political committee other than an authorized committee must disclose all
20 disbursements categorized as coordinated party expenditures on its disclosure reports. 2 U.S.C.
21 § 434(b)(4). These reports must also include the name and address of each person who receives

⁴ The Act also limits the contributions that a state party committee may make to a candidate committee to \$5,000 per election. 2 U.S.C. § 441a(a)(2). In addition to the coordinated party expenditures on behalf of Taddeo, the Committee also made the maximum \$5,000 contribution to the Taddeo campaign committee on October 13, 2008. Accordingly, the entire amount of the excessive coordinated party expenditure constitutes an excessive contribution.

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1 any expenditure from the committee during the reporting period in connection with a coordinated
2 party expenditure, together with the date, amount, and purpose of any such expenditure as well
3 as the name of, and office sought by, the candidate on whose behalf the expenditure is made.
4 2 U.S.C. § 434(b)(6).

5 As set forth in the Referral, the Committee failed to itemize \$194,957 in coordinated
6 party expenditures on Schedule F. We therefore recommend that the Commission find reason to
7 believe that the Committee violated 2 U.S.C. § 434(b) by failing to itemize these disbursements.

8 **D. Disclosure of Disbursements**

9 Audit identified disbursement entries totaling \$9,554,713 that included inadequate or
10 incorrect disclosure information. AR 12-11 at 8. The majority of these errors consisted of
11 disbursement entries listing inadequate or incorrect descriptions of purpose. *Id.* at 9. For
12 example, three mail pieces that described Senator McCain's position on an issue but did not
13 discuss absentee ballots or early voting were disclosed as "Absentee/Early Vote Mail" or "Direct
14 Mail/Early Vote." *Id.* Payments made for mail pieces that described the positions of then-
15 Senator Obama or Senator McCain were disclosed as "Literature, Generic Mail, or Direct Mail."
16 *Id.*

17 The Committee filed amended reports that "materially corrected" these disclosure errors
18 in response to the IAR. *Id.* at 10. Although the Committee amended the reports, the original
19 reports contained incorrect and inadequate disclosure information. Accordingly, the
20 Commission approved a finding that the Committee did not properly disclose disbursements
21 totaling \$9,554,713. *Id.*

22 In response to the Referral, the Committee argues that the information "require[d] and
23 request[ed]" by the Audit Division is not specifically required by Commission regulations and

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1 therefore these errors "do not rise to any violation of Commission statutes [*sic*] or regulations."
2 Resp. at 2. Instead, the Committee argues, "the general purpose of these expenditures complied
3 with the minimal requirements of 11 C.F.R. § 104.3(b)(3)(i)(B)." *Id.* The Committee further
4 notes that, in any event, it promptly amended its reports at Audit's request. *Id.*

5 The Act requires political committees to report the name and address of each person to
6 whom an expenditure is made for a candidate or committee operating expense in excess of \$200
7 per calendar year, together with the date, amount, and purpose of the operating expenditure.
8 2 U.S.C. § 434(b)(5)(A); 11 C.F.R. § 104.3(b)(3)(i). Commission regulations define purpose as
9 a "brief statement or description of why the disbursement was made." 11 C.F.R.
10 § 104.3(b)(3)(i). The Commission has also published a non-comprehensive, exemplary list of
11 inadequate purposes, one of which is "Literature." Statement of Policy: "Purpose of
12 Disbursement" Entries for Filings with the Commission, 72 Fed. Reg. 887, 888 (Jan. 9, 2007)
13 ("Statement of Policy").

14 Contrary to the Committee's assertion, the Act states that political committees must
15 disclose the purpose of itemized disbursements, and the Commission's regulations delineate
16 between adequate and inadequate descriptions. The Commission provided further examples in
17 its Statement of Policy. As set forth in the Referral, the Committee listed inadequate disclosure
18 information, including both incorrect and inadequate purposes, for disbursements totaling
19 \$9,554,713. We therefore recommend that the Commission find reason to believe that the
20 Committee violated 2 U.S.C. § 434(b) by failing to adequately disclose these disbursements.⁵

⁵ While OGC has, in past matters, recommended that the Commission dismiss low-amount reporting violations resulting from the disclosure of an inadequate purpose, this matter differs significantly in both the scope and the severity of the violation. Namely, the violation at hand includes the disclosure of both incorrect and inadequate purposes on more than \$9 million in disbursements.

E. Receipt of Excessive Contribution

On September 24, 2008, the Committee received a \$50,000 contribution from Gerald T. Vento. AR 12-11 at 11. The Committee deposited \$30,000 of this amount into its non-federal account and \$20,000 into its federal account. *Id.* On April 22, 2009 — 210 days later — the Committee refunded \$10,000 to Vento. *Id.*

In response to the Referral, the Committee acknowledges that it deposited \$20,000 of the Vento contribution into its federal account. Resp. at 2. The Committee asserts, however, that “[a]t the time of the deposit, it is believed that the Committee intended to attribute \$10,000 of the federal portion of the contribution to Mr. Vento’s spouse.” *Id.* The Committee explains that the reattribution did not occur and acknowledges that its \$10,000 refund to Vento was untimely. *Id.* The Committee notes, however, that it had sufficient funds to refund the contribution at all times before the refund. *Id.* at 3.

The Act prohibits a state party committee from knowingly accepting contributions from any one contributor that aggregate more than \$10,000 per calendar year. 2 U.S.C. § 441a(a)(1) and (f); 11 C.F.R. § 110.1(c)(5). Contributions that exceed this limit either on their face or when aggregated with other contributions from the same contributor may be either deposited into a campaign depository or returned to the contributor. 11 C.F.R. § 103.3(b)(3). If the contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor; however, if a redesignation or reattribution is not obtained, the treasurer must refund the contribution to the contributor within 60 days of its receipt. *Id.*

As set forth in the Referral, the Committee deposited a \$20,000 contribution into its federal account and failed to redesignate, reattribute, or refund the excessive portion of the contribution (\$10,000) within 60 days of its receipt. Accordingly, we recommend that the

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1 Commission find reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting
2 an excessive contribution.

3 This issue was not included in the FAR. It was instead referred to the Alternative
4 Dispute Resolution Office ("ADRO") on May 26, 2010, in accordance with the 2008 Materiality
5 Thresholds for Unauthorized Committees.⁶ See Memorandum from Patricia Carmona, Chief
6 Compliance Officer, to Lynn Fraser, Director, ADRO (May 26, 2010). The Committee initially
7 accepted ADR but later requested that the matter be held pending final disposition of the audit
8 for the same election cycle. See E-mail from Krista Roche, Ass't. Director, ADRO, to Joseph
9 Stoltz, Ass't. Staff Director, Audit (July 13, 2010, 10:24 am); E-mail from Krista Roche to Neil
10 Reiff, Committee Counsel (July 13, 2010, 2:28 pm). Accordingly, the ADRO matter —
11 ADR 543 — was deactivated on July 13, 2010, and held in abeyance pending the issuance of the
12 FAR and any resulting referrals. See *id.* After the FAR was approved by the Commission on
13 September 17, 2012, Audit included the issue in its Referral to OGC.⁷ Consequently, ADRO
14 transferred its matter to OGC and closed ADR 543 on February 21, 2013. See Memorandum
15 from Lynn Fraser, Director, ADRO to Greg Baker, Deputy Gen. Counsel, OGC (Feb. 21, 2013).

16 The Committee objects to Audit's referral of the alleged violation here because it was not
17 included in the FAR. Resp. at 3. The Committee notes that the issue did not meet the

⁶ Approved by the Commission on April 16, 2009, this policy establishes a "single event threshold" and instructs Audit staff to refer certain violations to either ADRO or OGC "if the threshold for inclusion in the audit report is not met." 2008 Materiality Thresholds for Unauthorized Committees at 10, 11 (emphasis in original).

⁷ It is Audit's practice to refer issues to OGC that would otherwise be referred to ADRO if at least one other issue from the audit is being referred to OGC. See, e.g. AR 07-08 at 1 (Craig Romero for Congress, Inc.) ("Receipt of Prohibited Contributions meets the criteria for referral to ADR. However, Audit Division policy dictates if one matter is referred to [OGC], other matters shall also be referred to [OGC].") See also Materiality Thresholds for Title 2 Authorized Committee Audits (approved by the Commission June 29, 2007) ("Generally, if any other finding from the audit meets the criteria for referral to OGC, none of the findings will be referred to ADR").

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1 Commission's thresholds for inclusion in the FAR and argues that the Commission "cannot bait
2 and switch issues that are not found to be material in the Audit context and then, after the fact,
3 decide that it is subject to civil enforcement and penalty." *Id.* The Committee asserts that only
4 issues raised in the FAR should be included in an Audit referral, to "provide the regulated
5 community . . . with notice as to those issues that are subject to subsequent enforcement in
6 connection with a particular audit." *Id.*

7 We find the Committee's objection unpersuasive. First, contrary to the Committee's
8 reasoning, pursuant to the Materiality Thresholds for Unauthorized Committees, Audit is
9 empowered to refer to OGC and ADRO alleged violations that do not meet the thresholds for
10 inclusion in an interim audit report. *See supra* note 6. Here, Audit found the alleged violation to
11 meet its "single event threshold." Audit staff therefore applied appropriate thresholds and
12 determined the alleged violation to be material.

13 Second, the Committee received notice of the alleged violation three times. On
14 November 30, 2009, Audit raised the alleged excessive contribution with the Committee during
15 the exit conference. *See* AR 12-11 at 11. The Committee subsequently filed an Exit Conference
16 Response addressing the excessive Vento contribution. *See* Exit Conference Response (Dec. 14,
17 2009); *see also* 2008 Materiality Thresholds for Unauthorized Committees at 12 ("The
18 committee will have the 10-day post exit conference response period to demonstrate that the
19 contribution was not excessive."). On June 3, 2010, the Committee received an invitation to
20 submit to ADR. Letter from Krista Roche, Ass't Director, ADRO, to Rudy Parker, Committee
21 Treasurer (June 3, 2010). On December 3, 2012, the Committee received notification of the
22 Referral to OGC. Letter from Jeff Jordan, Att'y, FEC, to Alma Gonzalez, Committee Treasurer
23 (Dec. 3, 2012). Moreover, following the invitation to participate in ADR, the Committee

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requested that the issue be held in abeyance pending final determination of the remaining issues resulting from the audit. See E-mail from Krista Roche to Neil Reiff (July 13, 2010, 2:28 pm). Accordingly, this issue should be considered in conjunction with the findings referred to OGC from the FAR.

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IV. RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe that the Democratic Executive Committee of Florida and Judy Mount in her official capacity as treasurer violated 2 U.S.C. § 441a(a) by making an excessive contribution.
3. Find reason to believe that the Democratic Executive Committee of Florida and Judy Mount in her official capacity as treasurer violated 2 U.S.C. § 434(b) by failing to itemize coordinated party expenditures.
4. Find reason to believe that the Democratic Executive Committee of Florida and Judy Mount in her official capacity as treasurer violated 2 U.S.C. § 434(b) by failing to adequately disclose disbursements.
5. Find reason to believe that the Democratic Executive Committee of Florida and Judy Mount in her official capacity as treasurer violated 2 U.S.C. § 441a(f) by accepting an excessive contribution.
6. Approve the attached Factual & Legal Analysis.
7. Enter into conciliation prior to a finding of probable cause to believe.
8. --

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9. Approve the appropriate letter.

BY:

4/5/13

Date

Anthony Herman
General Counsel



Daniel A. Petalas
Associate General Counsel



Mark D. Shonkwiler
Assistant General Counsel



Margaret Ritzert Howell
Attorney

Attachments:

1. Audit Referral

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Finding 1. Excessive Coordinated Party Expenditures

Summary

During fieldwork, the Audit staff calculated that DECF appears to have exceeded the 2008 coordinated party expenditures limit on behalf of a House candidate (\$60,000) by \$35,108. Our review identified two media ads (\$82,400) and two direct mail pieces (\$12,708) that appeared to represent coordinated party expenditures.

In response to the Interim Audit Report recommendation, DECF provided statements and documents to support its contention that the expenditures should not be considered excessive coordinated party expenditures. DECF submitted documentation for the direct mail pieces to support its claim that sufficient volunteer activity occurred, and that the expenses qualified for the volunteer materials exemption and were not coordinated party expenditures. In light of the lack of clarity in recent audits regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption, the Audit staff did not count the expenses toward the coordinated party expenditure limit. Regarding the two media ads (\$82,400), however, DECF did not demonstrate that it was granted additional spending authority beyond \$60,000. As a result, DECF exceeded its coordinated party expenditures limitation by \$22,400 (\$82,400 - \$60,000).

The Commission approved a finding that DECF exceeded its coordinated party expenditure limitation by \$22,400. In reaching its conclusion, the Commission noted that, based on the reports filed by the Democratic Congressional Candidate Committee (DCCC), the combined coordinated expenditure limit of \$84,200 was not exceeded on behalf of the House candidate.

Legal Standard

A. Coordinated Party Expenditures. National party committees and state party committees are permitted to purchase goods and services on behalf of candidates in the general election—over and above the contributions that are subject to contribution limits. Such purchases are termed “coordinated party expenditures.” They are subject to the following rules:

- The amount spent on “coordinated party expenditures” is limited by statutory formulas that are based on the Cost of Living Adjustment (COLA) and the voting-age population.
- Party committees are permitted to coordinate the spending with the candidate committees.
- The parties may make these expenditures only in connection with the general election.
- The party committees—not the candidates—are responsible for reporting these expenditures.
- If the party committee exceeds the limits on coordinated party expenditures, the excess amount is considered an in-kind contribution, subject to the contribution limits. 2 U.S.C. §441a(d) and 11 CFR §§109.30 and 109.32.

B. Assignment of Coordinated Party Expenditure Limit. A political party may assign its authority to make coordinated party expenditures to another political party committee. Such an assignment must be made in writing, state the amount of the authority assigned, and be received by the assignee before any coordinated party expenditure is made pursuant to the assignment. The political party committee that is assigned authority to make coordinated party expenditures must maintain the written assignment for at least three years. 11 CFR §§104.14 and 109.33(a) and (c).

C. Volunteer Activity. The payment by a state committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids or newsletters, and yard signs) used by such committee in connection with volunteer activities on behalf of any nominee(s) of such party is not a contribution, provided that the following conditions are met:

1. Such payment is not for cost incurred in connection with any broadcasting, newspaper, magazine, bill board, direct mail, or similar type of general public communication or political advertising. The term direct mail means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.
2. The portion of the cost of such materials allocable to Federal candidates must be paid from contributions subject to the limitations and prohibitions of the Act.
3. Such payment is not made from contributions designated by the donor to be spent on behalf of a particular candidate for federal office.
4. Such materials are distributed by volunteers and not by commercial or for-profit operations.
5. If made by a political committee such payments shall be reported by the political committee as a disbursement in accordance with 11 CFR §104.3 but need not be allocated to specific candidates in committee reports.
6. The exemption is not applicable to campaign materials purchased by the national party committees. 11 CFR §100.87 (a), (b), (c), (d), (e) and (g) and 11 CFR §100.147 (a), (b), (c), (d), (e) and (g).

Facts and Analysis

A. Facts

The coordinated expenditure limit for the 2008 election cycle for a U.S. House of Representatives candidate in the state of Florida was \$42,100. DECF provided documentation from the DCCC showing that it authorized DECF to spend \$17,900 of its limit on behalf of Annette Taddeo, a candidate for the U.S. House of Representatives. Therefore, DECF's coordinated spending limit for this candidate was \$60,000.

The Audit staff identified four disbursements, totaling \$95,108, on behalf of Annette Taddeo. Two disbursements (\$82,400) were for media ads. The remaining two disbursements (\$12,708) were for direct mail pieces. DECF disclosed the cost of one ad and both mail pieces as federal election activity on Line 30b of its disclosure reports. The cost of the remaining ad was disclosed as an operating expenditure on Line 21b.

One of the two ads discussed the candidate's position on health care. The other ad discussed the opponent's voting record on health care and taxes. The disclaimer for each ad stated, "Paid for by the Florida Democratic Party and Taddeo for Congress, Approved by Annette Taddeo."

Regarding the direct mail pieces, a vendor located in Virginia processed and mailed the two direct mail pieces (one in English, the other in Spanish). The file for this vendor included an email communication from a vendor representative to a representative of DECF requesting approval of the direct mail piece. The vendor also copied the Taddeo campaign on the email.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff provided DECF representatives with a schedule of the apparent excessive coordinated expenditures. In response, DECF stated its belief that it was authorized to spend an additional \$22,400 because the DCCC had reported spending only \$1,754 in coordinated campaign expenditures on behalf of candidate Taddeo. DECF also stated that the combined total spent on Taddeo was less than the \$84,200 available¹. DECF contends that the DCCC and DECF coordinated to achieve this and that the remaining authority would have been transferred to DECF. DECF also stated that the Taddeo mail pieces represented exempt activity.

The Interim Audit Report recommended that DECF demonstrate that it did not exceed its coordinated spending limit by providing evidence that:

- It received additional spending authority from the DCCC prior to spending in excess of its \$60,000 limitation; and
- There was volunteer involvement with respect to the direct mail pieces.

Absent such evidence, the Interim Audit Report recommended that DECF obtain a refund of \$35,108 (\$95,108 - \$60,000) from Taddeo for Congress and provide evidence of the refund received.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report, DECF stated that the audit report correctly states that DECF reported coordinated expenditures of \$95,108 on behalf of Annette Taddeo.² DECF acknowledged that DECF paid for two media ads, totaling \$82,400, on behalf of the candidate and that prior to making these expenditures, the DCCC assigned \$17,900 of its coordinated expenditure limit to DECF. DECF also submitted a letter, dated September 22, 2011, from the DCCC to explain the coordinated expenditure authority. The letter stated, "[t]he DCCC's current records show a transfer (of) \$17,900 in coordinated expenditure authority in connection with this election to the Florida Democratic Party on October 29, 2008. While we can locate no further records of other transfers of authority to your committee in connection with this election, we did support

¹ DECF had a coordinated expenditure spending limit of \$42,100 and the National Party Committee also had a coordinated expenditure spending limit of \$42,100.

² Disclosure reports subject to this audit did not disclose any coordinated expenditures for Annette Taddeo. (See Finding 2.)

Ms. Taddeo's candidacy -- both before and after the date of the above transfer -- and we know of no reason why any requested or needed transfer of authority would have been withheld at the time."

Regarding the two mail pieces, DECF stated that the mail pieces were actually prepared with substantial volunteer participation and, therefore, met the volunteer materials exemption and should not be considered coordinated party expenditures. DECF also provided a copy of a photo that it believed demonstrated volunteer participation. In light of the lack of clarity in recent audits regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption, the Audit staff did not count the expenses toward the coordinated party expenditure limit.

In response to the Interim Audit Report, neither DECF nor the DCCC could locate a record authorizing additional spending authority. As noted in the legal standards above, 11 CFR §109.33(a) requires that an assignment must be made in writing, state the amount of the authority assigned, and be received by the assignee before any coordinated party expenditure is made pursuant to the assignment. In similar cases, the Commission has rejected assignments of spending authority after the fact.³ Absent evidence of additional spending authority from the DCCC, DECF's coordinated spending limit was \$60,000 and DECF exceeded its coordinated expenditure limitation by \$22,400 (\$82,400 [media ad expenditures] - \$60,000 [DECF's coordinated spending limit]).

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff noted that DECF had not demonstrated, in writing, that it was granted additional spending authority beyond \$60,000. As a result, the Audit staff concluded that DECF exceeded its coordinated party expenditure limitation by \$22,400 (\$82,400 - \$60,000).

E. Committee Response to the Draft Final Audit Report

DECF contended that the Final Audit Report should note that the combined coordinated expenditure limit of \$84,200 was not exceeded for Annette Taddeo. DECF further added that "although there may have been a paperwork error with respect to the transfer of this unused authority, the authority held by the DCCC was in fact, unused. Therefore, as a practical matter, the combined 441a(d), in total, had not been exceeded and thus, no unfair advantage had been conferred upon the DECF or the Taddeo campaign."

Commission Conclusion

On June 7, 2012, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended the Commission find that DECF exceeded its coordinated party expenditure limitation by \$22,400.

The Commission approved the Audit staff's recommendation. In reaching its conclusion, the Commission noted that, based on the reports filed by the Democratic Congressional

³ Final Audit Report on Missouri Democratic State Committee, MUR 5274. Final Audit Report on the California Republican State Committee, MUR 5246.

Candidate Committee, the combined coordinated expenditure limit of \$84,200 was not exceeded on behalf of the House candidate.

Finding 2. Failure to Itemize Coordinated Party Expenditures

Summary

During fieldwork, the Audit staff identified 64 expenditures, totaling \$207,665, which DECF did not itemize on Schedule F (Itemized Coordinated Party Expenditures). DECF made the expenditures on behalf of six congressional candidates. Subsequent to the start of audit fieldwork, DECF filed amended reports that substantially disclosed the expenditures in question as coordinated party expenditures on Schedule F.

In response to the Interim Audit Report recommendation, DECF made no additional comments on this matter. DECF has corrected the public record with respect to these transactions.

The Commission approved a finding that DECF failed to itemize coordinated party expenditures of \$194,957.

Legal Standard

Reporting Coordinated Party Expenditures. Each political committee shall report the full name of each person who receives any expenditure from the reporting committee during the reporting period in connection with an expenditure under 11 CFR Part 109, Subpart D (2 U.S.C. §441a(d)), together with the date, amount and purpose of any such expenditure as well as the name of, and office sought by the candidate on whose behalf the expenditure is made, 11 CFR §104.3 (b)(1)(viii).

Facts and Analysis

A. Facts

The Audit staff identified 64 expenditures, totaling \$207,665, that DECF did not itemize on Schedule F as coordinated party expenditures. The expenditures were made on behalf of six congressional candidates and included payments for staff salaries, direct mail, cell phones and media ads. Subsequent to the start of audit fieldwork, DECF filed amended reports that substantially disclosed the expenditures in question as coordinated party expenditures on Schedule F.

B. Interim Audit Report & Audit Division Recommendation

This matter was presented at the exit conference. In response, DECF stated that it believes two of the disbursements, totaling \$12,708, were volunteer mailings (Taddeo mail pieces discussed in Finding 1) and thus would not need to be reported on Schedule F. The Interim Audit Report recommended that DECF provide any additional information or comments it considered relevant to this matter.

C. Committee Response to Interim Audit Report

In response, DECF did not have any additional comments on this matter. As explained in Finding 1, there is a lack of clarity regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption. As a result, expenses for two direct mail pieces totaling \$12,708 were not classified as coordinated party expenditures. Therefore, the amount of expenditures not previously itemized on Schedule F is \$194,957 (\$207,665 - \$12,708). DECF has corrected the public record with respect to these transactions.

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged that DECF has corrected the public record with respect to the transactions identified. DECF's response to the Draft Final Audit Report did not address this matter.

Commission Conclusion

On June 7, 2012, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended the Commission find that DECF did not itemize coordinated party expenditures of \$194,957 on Schedule F.

The Commission approved the Audit staff's recommendation.

Finding 5. Disclosure of Disbursements

Summary

During audit fieldwork, the Audit staff calculated that disbursement entries, totaling \$9,554,713, contained inadequate or incorrect disclosure information. In response to the Interim Audit Report recommendation, DECF filed amended reports that materially corrected the disclosure errors.

The Commission approved a finding that DECF did not properly disclose disbursements of \$9,554,713.

Legal Standard

A. Reporting Operating Expenditures. When operating expenditures to the same person exceed \$200 in a calendar year, the committee must report the:

- amount;
 - date when the expenditures were made;
 - name and address of the payee; and
 - purpose (a brief description of why the disbursement was made—see below).
- 2 U.S.C. §434(b)(5)(A) and 11 CFR §104.3(b)(3)(i).

B. Examples of Purpose. Adequate Descriptions. Examples of adequate descriptions of "purpose" include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, catering costs, loan repayment, or contribution refund. 11 CFR §104.3(b)(3)(i)(B).

Inadequate Descriptions. The following descriptions do not meet the requirement for reporting "purpose": advance, election-day expenses, other expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote, and voter registration. 11 CFR §104.3(b)(3)(i)(B) and Commission Policy Statement at www.fec.gov/law/policy/purposeofdisbursement/inadequate_purpose_list_3507.

Facts and Analysis

A. Facts

The reported purpose of the disbursement, when considered with the identity of the disbursement recipient, must clearly specify why the disbursement was made. The Audit staff reviewed disbursements itemized by DECF for proper disclosure on both a sample and 100 percent basis. These reviews resulted in errors totaling \$9,554,713. This amount comprises projected errors totaling \$1,708,395 from the sample review and \$7,846,318 in errors from the separate review conducted on a 100 percent basis.⁴ The disclosure errors identified in each review were similar.

From the 100 percent review, more than \$7,300,000 of the disclosure errors was for campaign materials that, for the most part, (1) described then-Senator Obama's position on issues, (2) compared then-Senator Obama and Senator McCain's position on issues or (3) were for get-out-the-vote telephone calls authorized by Obama for America. The majority of errors in the review were for inadequate or incorrect purposes disclosed.

Examples of incorrect purposes included the following:

- Three mail pieces that described Senator McCain's position on an issue were disclosed as either "Absentee/Early Vote Mail" or "Direct Mail/Early Vote." The mail pieces did not discuss obtaining an absentee ballot or voting early.
- A mail piece that stated vote Obama and provided polling locations, voting and ride information was disclosed as "Generic Literature."

Examples of inadequate purposes included the following:

- Payments for automated phone banks by or on behalf of then-Senator Obama that asked for your vote or provided information on polling locations were disclosed as "Telephone Calls" or "Generic Telephone Calls."
- Payments for mail pieces that described then-Senator Obama's position on issues, Senator McCain's position on issues or the positions of both candidates were disclosed as Literature, Generic Mail, or Direct Mail.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter at the exit conference. In response, DECF representatives stated they would review this issue. The Interim Audit Report recommended that DECF amend its reports to correct the disclosure errors.

⁴ The error amount was projected using a Monetary Unit Sample with a 95 percent confidence level plus the results of a 100 percent review of items not in the sample population. The sample estimate could be as low as \$1,350,377 or as high as \$2,066,413.

C. Committee Response to Interim Audit Report

In response, DECF filed amended reports that materially corrected the inadequate and/or incorrect disclosure information.

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged that DECF had amended its reports to materially correct the inadequate and/or incorrect disclosure information. DECF's response to the Draft Final Audit Report did not address this matter.

Commission Conclusion

On June 7, 2012, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended the Commission find that DECF did not properly disclose disbursements totaling \$9,554,713.

The Commission approved the Audit staff's recommendation.

Receipt of Contribution that Exceeds the Limit

Legal Standard

A. Party Committee Limits. A party committee may not receive more than a total of \$10,000 per year from any one contributor. 2 U.S.C. §441a(a)(1)(D) and (F); 11 CFR §110.1(c)(5)

B. Handling Contributions That Appear Excessive. If a committee receives a contribution that appears to be excessive, the committee must either:

- Return the questionable check to the donor; or
- Deposit the check into its federal account and:
 - o Keep enough money in the account to cover all potential refunds;
 - o Keep a written record explaining why the contribution may be illegal;
 - o Include this explanation on Schedule A if the contribution has to be itemized before its legality is established;
 - o Seek a reattribution of the excessive portion, following the instructions provided in Commission regulations; and,
 - o If the committee does not receive a proper reattribution within 60 days after receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §§103.3(b)(3), (4) and (5) and 110.1(k)(3)(ii)(B).

Facts and Analysis

DECF received a \$50,000 contribution from Gerald T. Vento on September 24, 2008. Of this amount, \$20,000 was deposited directly into DECF's federal account and \$30,000 was deposited directly into its non-federal account. On April 22, 2009, DECF refunded \$10,000 to the contributor. The refund was not timely as it occurred 210 days after the contribution was deposited. It should be noted that DECF maintained, at all times, sufficient funds to make the necessary refund.

The matter was discussed at the exit conference. In response, DECF stated it received a \$20,000 contribution from the contributor. The deposit was structured so that \$10,000 was to be deposited into the DECF's federal account and \$10,000 into its non-federal account. DECF further stated that the deposit was recorded as such in the accounting software and reported. However, the entire amount was inadvertently deposited into the federal account. Upon discovering the discrepancy, DECF refunded \$10,000 to the contributor.

DECF appears to have misrepresented this transaction. The Audit staff has a copy of the contributor's check (\$50,000) and copies of deposit tickets for both the federal and non-federal accounts. Further, DECF's electronic files and disclosure reports both indicate that the contributor made a \$20,000 contribution. The Audit staff stands by its representation of the facts.